



MEMORANDUM

TO: David Shilson, Chief of Police

FROM: Shawn Marthiljohni, Lieutenant

SUBJECT: 2019 Biased Based Profiling Report

DATE: January 28th, 2020

Introduction

The Frisco Police Department, in accordance with the Texas Racial Profiling Law (S.B. No. 1074), has been collecting police contact data for the purpose of identifying and responding (if necessary) to concerns regarding biased based profiling practices. The law also requires that the police department submit to the governing body (city council) an annual report of the information collected. The purpose of this annual report is to provide statistical data and analysis for a year's worth of traffic stop data covering the period of January 1, 2019 through December 31, 2019. To accomplish this, this report will focus upon the following topics:

1. How the traffic stop data was collected
2. An overview of the racial/ethnic data collected
3. An analysis of what the Department believes the statistics mean, as well as what the Department has learned from the data
4. Problems Identified when Analyzing the Data
5. Recommendations Addressing Issues of Concern

How the Traffic Stop Data Was Collected

The Texas Racial Profiling Law (SB 1074) mandated collection of information relating to motor vehicle stops in which a citation is issued or there are arrests resulting from those stops. The data (called Tier 1 data) would include:

1. The race or ethnicity of the individual detained

2. Whether a search was conducted
3. Whether the search was consensual

An Overview of the Racial/Ethnicity Data Collected

Table 2 contains the information collected from traffic stops in 2019 where a citation or warning was issued, or an arrest was made. This is the second year the department is required to report the number of warnings. Table 1 contains the information collected from motor vehicle stops in 2018 where a citation or warning was issued, or an arrest was made. Table 1 is provided for comparison purposes. Assignment of race and/or ethnicity to a category is either as stated by the stopped person or as determined by the officer to best of his ability. In 2010, officers were required to collect data as to whether they knew a person's race or ethnicity prior to a stop being made. A consensual search is determined by a request from the officer to conduct a search. The person stopped is under no obligation to consent to the search. If they do not consent, then the officer must have probable cause for the search. This would include search incident to an arrest, inventory of vehicle after arrest, or other probable cause for searches without a warrant.

For example, Table 1 reads that in 2018 we stopped 26445 Caucasians and either issued a citation or made an arrest or gave them a warning. This accounted for 54.17% of all traffic stops. Of all the Caucasians stopped 3.83% of them were searched. 47.93% of the searches were consensual and the rest non-consensual. 2% of Caucasians stopped were arrested for the traffic violation or other charges.

Table 1. General Demographics of Contacts and Searches 2018

Race/Ethnicity*	Contacts		Searches		Consensual Searches		Non-Consensual Searches		Custody Arrest	
	N	%	N	%	N	%	N	%	N	%
Caucasian	26445	54.17	1014	3.83	486	47.93	528	52.07	531	2
African American	9468	19.39	811	8.57	214	26.39	597	73.61	545	5.76
Hispanic	7189	14.72	441	6.13	173	39.23	268	60.77	310	4.31
Asian	5440	11.14	68	1.25	30	44.12	38	55.88	45	.83
Native American	280	.58	2	.71	2	100	0	0	4	1.43
Total	48822	100	2336	4.78	905	38.74	1431	61.26	1435	2.94

*Race/Ethnicity are defined by SB 1074 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, or Native America"

Table 2 reads that in 2019 we stopped 26,972 Caucasians and either issued a citation or made an arrest or gave them a warning. This accounted for 53.72% of all traffic stops. Of all the Caucasians stopped and cited or arrested, 2.83% of them were searched. 46.34% of the searches were consensual and the rest non-consensual. 1.3% of Caucasians stopped were arrested for the traffic violation or other charges.

Table 2. General Demographics of Contacts and Searches 2019

Race/Ethnicity*	Contacts		Searches		Consensual Searches		Non-Consensual Searches		Custody Arrest	
	N	%	N	%	N	%	N	%	N	%
Caucasian	26972	53.72	764	2.83	354	46.34	410	53.66	350	1.30
African American	9817	19.55	656	6.68	165	25.15	491	74.85	367	3.74
Hispanic	7051	14.04	396	5.62	172	43.43	224	56.57	180	2.55
Asian / Pacific Islander	6253	12.45	64	1.02	20	31.25	44	68.75	35	.56
Alaskan Native / American Indian	120	.24	1	.83	0	0	1	100	1	.83
Total	50213	100	1881	3.75	711	37.80	1170	62.20	933	1.86

*Race/Ethnicity are defined by SB 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

Department’s Analysis of the Data/Lessons Learned

This is the sixteenth year that this report is required. Agencies across the state are still determining the best and most accurate means of capturing, reporting, and comparing data to achieve meaningful analysis. The data presented in this report contains valuable information regarding police contacts with the public between 1/1/19 and 12/31/19. Despite its value, the raw data does not present much information relevant to racial profiling trends. Although further analysis of the data is warranted, it is problematic. The experts in this field identify two sources. One is census data for our community and the second is DPS data for licensed drivers in our community. Both sources present challenges to any effort made at establishing a fair and accurate analysis. Census data contains information of all residents of a particular community, regardless of the fact they may or may not be among the driving population. DPS data is only available sorted by zip code and 75033/75034/75035/75036 contains driver information for persons living outside the city. DPS data, at least, identifies those persons who ought to be driving in Frisco, but certainly cannot account for drivers coming here to work, shop or just passing through. Both of these data integrity issues have a tendency of inflating the overall figures; thus, providing an inaccurate representation of police contacts with the public. Without the ability to confirm the demographic makeup of every person driving in and about the

City of Frisco throughout the year and accounting for each incident of said driving, the previous two data sources are the primary avenues of information. Having said that, experts agree that you should compare it to something.

A comparison of city residents who were cited, warned, or arrested during a traffic stop during 2019 with those who, according to DPS, were residents of 75033/75034/75035/75036 during that time and held a valid driver's license was completed.

The DPS data showed that 65.7% of Frisco residents with a driver's license were Caucasian. 8.9% were African-American, .4% Native American, 18.1% Asian, 4.7% Hispanic, and 2.2% were listed as "Other". According to DPS, "Other" is to be used for those of "mixed" races/backgrounds who refuse to accept any of these classifications, or for other unusual situations. Note, this is the fourth year DPS has divided the Hispanic and Caucasian category. It will take another year before they are divided fully due to the driver's license renewal cycle.

Our data showed that of the persons warned, cited, or arrested, approximately 35.37% (17759) were Frisco residents. Caucasians accounted for 54.8%, African-American 16.6%, Native American .4%, Asian 16.6%, and Hispanic 11.6%.

Unfortunately, the data doesn't tell the full picture. Currently there is no way to include inflow of traffic and the demographic changes that occur with those. With all the surges that occur due to sporting events, concerts, the mall, general shopping spillover from surrounding cities, and people who work here, but don't live here, there is no effective way to measure the demographics of all drivers in Frisco. Until methods of capturing this data can be compiled, the data is going to continue to be a partial snapshot every year.

Profiling Complaints Received

	Complaints	Sustained	Unfounded	Exonerated	Not Sustained
2015	4	0	4	0	0
2016	8	0	3	4	1
2017	12	0	8	4	0
2018	15	0	15	0	0
2019	14	0	14	0	0

In 2019, the department received fourteen complaints alleging racial profiling. All fourteen complaints received were investigated by the Professional Standards Unit. During this past year the department continued its effort to encourage citizens to report/complain of any incident where they felt officers of the department may have been participating in biased based practices. All of the complaints received in 2019 have an unfounded disposition.

In conclusion, the findings suggest that the Department does not currently experience a problem regarding biased based profiling practices. The continuing effort to collect police contact data will enable an on-going evaluation of police practices. Thus, allowing for the citizens of the community to benefit from professional and courteous service from their police department.

Recommendations Addressing Issues of Concern

Beyond the collection of data, the Department will continue to publish information about the Bias Based Profiling Policy to its personnel and the public. Complaints of bias based profiling will be investigated. I have attached a copy of Frisco Police Department Racial Profile Report (Attachment A), Tier 1- Partial Exemption Racial Profiling Report (Attachment B), and our Bias Based Profiling Policy (Attachment C). If you have any questions or comments, feel free to contact me.

Appendix A

Frisco Police Department Racial Profile Report - reported to TCOLE

FRISCO POLICE DEPARTMENT

Racial Profile Report

01/01/2019 - 12/31/2019

Total stops: 50213

1. Gender

CCP 2.133(b)(1)(a)

1.1 Female: 21221

1.2 Male: 28992

2. Race or Ethnicity

CCP 2.132(a)(3), 2.132(b)(6)(A), 2.133(b)(1)(B)

2.1 Black: 9817

2.2 Asian/Pacific Islander: 6253

2.3 White: 26972

2.4 Hispanic/Latino: 7051

2.5 Alaskan Native/American Indian: 120

3. Was race or ethnicity known prior to stop?

CCP 2.132(b)(6)(C)

3.1 Yes: 700

3.2 No: 49513

4. Reason for stop?

CCP 2.132(b)(6)(F), 2.133(b)(2)

4.1 Violation of law: 1339

4.2 Pre existing knowledge: 494

4.3 Moving traffic violation: 32876

4.4 Vehicle traffic violation: 15504

5. Street address or approximate location of the stop

CCP 2.132(b)(6)(E), 2.133(b)(7)

5.1 City Street: 47239

5.2 US Highway: 969

5.3 County road: 51

5.4 State Highway: 1800

5.5 Private property or other: 154

6. Was a search conducted?

CCP 2.132(b)(6)(B), 2.133(b)(3)

6.1 Yes: 1881

6.2 No: 48332

7. Reason for Search?

7.1 Consent: 717

7.2 Contraband in plain view: 110

7.3 Probable cause: 868

7.4 Inventory: 110

7.5 Incident to arrest: 76

CCP 2.132(b)(6)(B), 2.133(b)(3)

CCP 2.133(b)(5)(A)

CCP 2.133(b)(5)(B)

CCP 2.133(b)(5)(C)

CCP 2.133(b)(5)(C)

8. Was Contraband discovered

CCP 2.133(b)(4))

8.1 Yes: 874

8.2 No: 1007

Appendix A

Frisco Police Department Racial Profile Report - reported to TCOLE

9. Description of contraband CCP 2.133(b)(4)

9.1 Drugs: 662
9.2 Currency : 1
9.3 Weapons: 9
9.4 Alcohol: 85
9.5 Stolen property: 10
9.6 Other: 107

10. Result of the stop

10.1 Verbal warning: 23087
10.2 Written warning: 10508
10.3 Citation: 15449
10.4 Written Warning and Arrest: 20
10.5 Citation and Arrest: 216
10.6 Arrest: 933

11. Arrest based on CCP 2.133(b)(6)

11.1 Violation of Penal Code: 533
11.2 Violation of Traffic Law: 215
11.3 Violation of City Ordinance: 1
11.4 Outstanding Warrant: 420

12. Was physical force resulting in bodily injury used during stop? CCP 2.132(b)(6)(D), 2.133(b)(9)

12.1 Yes: 11
12.2 No: 50202

Appendix B

Frisco Police Department Biased Based Profiling Policy



GENERAL ORDER 6.20

ISSUED: December 1, 2001

REVISED: June 4, 2018

EFFECTIVE: June 18, 2018

BIAS BASED PROFILING

Standards: 1.2.9a, 1.2.9b, 1.2.9c

6.20.01 PURPOSE.

The purpose of the policy is to reaffirm the Frisco Police Department's commitment to unbiased policing in all its encounters between an officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

6.20.02 POLICY.

It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of law. Officers shall actively enforce state and local laws in a responsible and professional manner, without bias. Officers are strictly prohibited from engaging in bias based profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians, traffic and field contacts. [1.2.9a]

Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This policy shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

6.20.03 DEFINITIONS.

- A. **BIAS BASED PROFILING** – A law enforcement-initiated action based solely on a trait common to a group.
 - 1. The Frisco Police Department is prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted by the City of Frisco. Remedies and complaint filing deadlines vary by program or incident.

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Frisco Police Department Biased Based Profiling Policy

Frisco Police Department General Order 6.20
Revised: June 4, 2018

2. Bias based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants or other citizen contacts.
 3. The prohibition against bias based profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling.
 4. Examples of bias based profiling include but are not limited to the following:
 - a. Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
 - b. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
 - c. Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.
 5. A law enforcement agency can derive two principles from the adoption of this definition of bias based profiling:
 - a. Police may not use bias as a factor in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.
 - b. Law enforcement officers may not use bias as a factor in selecting whom to stop and search. Bias based profiling is not relevant as it pertains to witnesses, etc.
- B. RACE OR ETHNICITY – Of a particular descent, including but not limited to Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern.
- C. MOTOR VEHICLE STOP – A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

6.20.04 TRAINING.

All affected personnel will receive initial training and subsequent annual retraining on bias based issues including legal aspects. [1.2.9b]

6.20.05 COMPLAINT INVESTIGATION.

- A. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
- B. Any employee who receives an allegation of bias based profiling, including the officer who initiated the stop, shall record the person's name, address and telephone number, and forward the complaint through the appropriate channel or direct the individual(s) to a supervisor. Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a

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complaint. All employees will report any allegation of bias based to their superior before the end of their shift.

- C. Investigation of a complaint shall be conducted in a thorough and timely manner and in accordance with G. O. 3.05 Professional Standards.
- D. If there is a departmental video or audio recording of the events upon which a complaint of bias based profiling is related to, upon commencement of an investigation by this department into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.

6.20.06 PUBLIC EDUCATION.

This department will inform the public of its policy against bias based profiling and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the Internet, Department Social Media, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

6.20.07 USE OF VIDEO AND AUDIO EQUIPMENT.

- A. Each motor vehicle regularly used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment, and each motorcycle regularly used by this department to make traffic and pedestrian stops is equipped with recording equipment; and
- B. Each motor vehicle and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, is recorded.
- C. This department shall retain the video of each motor vehicle and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in bias based profiling with respect to a traffic or pedestrian stop, this department shall retain the video of the stop until final disposition of the complaint.
- D. Supervisors will ensure officers of this department are recording their motor vehicle and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.
- E. If the equipment used to record audio and/or video of motor vehicle or pedestrian stops is malfunctioning or otherwise not operable, the officer making the stop may properly record and report the information as required in 6.20.08.
- F. In circumstances where an Officer's video and audio equipment is not functioning or not available officers are still required to collect the required bias based profiling data. This can be accomplished by communicating the data to dispatch at a later time, filling out a motor vehicle data collection form and submitting it, or the officer himself enters the required data via the MDC as soon as practical after the stop is completed.

6.20.08 REQUIRED BIASED BASED PROFILING DATA TO BE COLLECTED.

Officers should collect all of the required biased based profiling data as outlined in the Texas Code of Criminal Procedure Section 2.133.

6.20.09 REPORTING DATA.

Not later than March 1st of each year, the department shall submit a report to their governing board that includes the information gathered by the citations. The report will include for motor vehicle operators only:

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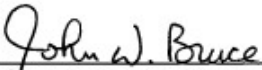
1. A breakdown of citations by race or ethnicity;
2. a breakdown of whether race/ethnicity was known prior to a motor vehicle stop;
3. a breakdown of initial reasons for motor vehicle stop;
4. number of citations that resulted in a search;
5. number of searches that were consensual; and
6. number of citations that resulted in custodial arrest for this cited violation or any other violation.

6.20.10 ANNUAL REVIEW. [1.2.9c]

A documented annual administrative review, of the above reporting data to include complaints, will be submitted to the Chief of Police. This report will be created out of the office of the Chief of Police. This report will review agency practices, including citizen concerns and any corrective measures taken.

6.20.11 PRIOR ORDERS.

From and after the effective date of issuance of this order, it shall be in full force and shall govern the operations of this department with regard to its subject matter. Former orders, policies, directives and memoranda relating to the subject matter are hereby specifically revoked and they shall be of no force and effect from and after the date of issuance of this order.

 6/4/18
John W. Bruce Date
Chief of Police